

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 56
FINAL READING

Introduced by Byars, 30

Read first time January 9, 2003

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to the State Board of Health; to amend sections
2 71-2602, 71-2603, 71-2606, 71-2607, and 71-2610, Reissue
3 Revised Statutes of Nebraska, and sections 71-2601 and
4 71-2610.01, Revised Statutes Supplement, 2002; to provide
5 and change powers and duties; to change provisions
6 relating to membership, terms, removal, and meetings; to
7 provide immunity from liability as prescribed; to
8 harmonize provisions; to provide an operative date; and
9 to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-2601, Revised Statutes Supplement,
2 2002, is amended to read:

3 71-2601. (1) The State Board of Health shall promote and
4 protect the health and safety of all people in Nebraska.

5 (2) The board shall consist of seventeen members to be
6 appointed by the Governor with the consent of a majority of the
7 members of the Legislature. Two members shall be licensed to
8 practice medicine and surgery in this state, one member shall be
9 licensed to practice dentistry in this state, one member shall be
10 licensed to practice optometry in this state, one member shall be
11 licensed to practice veterinary medicine in this state, one member
12 shall be licensed to practice pharmacy in this state, two members
13 shall be licensed to practice nursing in this state, one member
14 shall be licensed to practice osteopathic medicine and surgery or
15 as an osteopathic physician in this state, one member shall be
16 licensed to practice podiatry in this state, one member shall be
17 licensed to practice chiropractic in this state, one member shall
18 be licensed to practice physical therapy in this state, one member
19 shall be a professional engineer in this state, one member shall be
20 an administrator of a hospital in this state which is licensed
21 under the Health Care Facility Licensure Act, one member shall be a
22 credentialed mental health professional, and two members shall be
23 public members who at all times are public-spirited citizens of
24 Nebraska interested in the health of the people of the State of
25 Nebraska and not less than twenty-one years of age. If a member
26 fails at any time to meet the qualifications for the position for
27 which he or she was appointed, such member may be removed by the
28 Governor pursuant to section 71-2603.

1 (3) The Governor shall also be an ex officio member of
2 such board but shall be permitted to vote on matters before the
3 board only when necessary to break a tie.

4 Sec. 2. Section 71-2602, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-2602. The Governor shall appoint the members of the
7 State Board of Health. Each member of the board serving on
8 ~~September 9, 1993,~~ the operative date of this act shall hold office
9 ~~for the remainder of the term for which he or she was appointed~~
10 until August 1 of the calendar year in which his or her term would
11 otherwise expire. Appointments made for the succeeding members
12 shall be for terms of five years. The term of office of each
13 member of the board shall expire on ~~September 14~~ August 1 of the
14 appropriate year. If a vacancy occurs prior to the expiration of a
15 term, the Governor shall appoint a successor with similar
16 qualifications for the remainder of the unexpired term. No member
17 of the board shall serve more than two consecutive, full terms. If
18 the Legislature is not in session when an appointment is made by
19 the Governor, the member shall take office and act as a recess
20 appointee until the Legislature convenes.

21 Sec. 3. Section 71-2603, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-2603. Members of the State Board of Health may be
24 removed by the Governor for inefficiency, neglect of duty, failure
25 to maintain the qualifications for the position for which
26 appointed, or misconduct in office, but only after delivering to
27 the member a copy of the charges and affording ~~him~~ the member an
28 opportunity of being publicly heard in person or by counsel in his

1 or her own defense, upon not less than ten days' notice. Such
2 hearing shall be held before the Governor. If such member ~~shall be~~
3 is removed, the Governor shall file in the office of the Secretary
4 of State a complete statement of all charges made against such
5 member and ~~his~~ the Governor's findings thereon, together with a
6 complete record of the proceedings.

7 Sec. 4. Section 71-2606, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 71-2606. ~~The~~ In the last calendar quarter of each year,
10 the members of the State Board of Health shall meet in January of
11 ~~each year~~ and ~~shall~~ elect a ~~chairman~~ chairperson of the board from
12 ~~its~~ the members, and such other officers, including a
13 ~~vice-chairman,~~ as it vice-chairperson and a secretary, as the board
14 deems necessary. In case of the death, resignation, or other
15 permanent absence of the ~~chairman~~ chairperson of the board, the
16 ~~vice-chairman~~ vice-chairperson shall assume the office of ~~chairman~~
17 chairperson and the members of the ~~State Board of Health~~ board at
18 the next regular meeting of the board, or at a special meeting of
19 the board pursuant to a call signed by five members, of which the
20 other members shall have at least three days' notice, shall elect a
21 new ~~chairman~~ chairperson of the board from ~~its~~ the members, and
22 such other new officers as ~~it~~ the board deems necessary.

23 Sec. 5. Section 71-2607, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 71-2607. The State Board of Health shall meet at least
26 once each quarter, and at such other times as it deems necessary.
27 Special meetings may be held upon the call of the ~~chairman,~~
28 chairperson or pursuant to a call signed by five other members, of

1 which the ~~chairman~~ chairperson and the other members of the board
2 shall have at least three days' notice. All regular meetings shall
3 be held in suitable offices to be provided in the ~~State Capitol~~
4 state office building described in section 81-1108.37 or elsewhere.
5 A majority of the members of the board shall constitute a quorum
6 for the transaction of business. Every act of a majority of the
7 members of the board shall be deemed to be the act of the board.
8 All meetings shall be open to the public. The minutes of the
9 meetings shall show the action of the board on matters presented,
10 and shall be open to public inspection.

11 Sec. 6. Section 71-2610, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 71-2610. (1) The State Board of Health shall advise the
14 ~~department~~ Department of Health and Human Services Regulation and
15 Licensure regarding:

16 ~~(1)~~ (a) Rules and regulations for the government of the
17 Department of Health and Human Services Regulation and Licensure
18 including those required pursuant to section 71-115.01 department;

19 ~~(2)~~ (b) The policies of the department as they relate to
20 support provided to the board;

21 (c) The policies of the department concerning the
22 professions and occupations described in section 71-2610.01;

23 (d) Communication and cooperation among the professional
24 boards; and

25 (e) Plans of organization or reorganization of the
26 department.

27 (2) Upon request of the Policy Cabinet, the board shall
28 advise them on matters pertaining to public health. ~~Department of~~

1 ~~Health and Human Services Regulation and Licensure,~~

2 ~~(3) Health needs for the state,~~

3 ~~(4) An educational health program throughout the state,~~

4 ~~and~~

5 ~~(5) Plans of organization or reorganization of the~~

6 ~~Department of Health and Human Services Regulation and Licensure.~~

7 ~~All funds rendered available by law, including funds~~

8 ~~already collected for such purposes, may be used by the department~~

9 ~~in administering and effecting such purposes.~~

10 Sec. 7. Section 71-2610.01, Revised Statutes Supplement,
11 2002, is amended to read:

12 71-2610.01. ~~(1)~~ The State Board of Health shall: ~~have~~
13 ~~the power and duty to:~~

14 ~~(a)~~ (1) Adopt and promulgate rules and regulations for
15 the government of the professions and occupations licensed,
16 certified, registered, or issued permits by the Department of
17 Health and Human Services Regulation and Licensure, including rules
18 and regulations necessary to implement laws enforced by the
19 department. These professions and occupations ~~include, but are not~~
20 ~~limited to,~~ are those subject to the Advanced Practice Registered
21 Nurse Act, the Asbestos Control Act, the Licensed Practical
22 Nurse-Certified Act, the Nebraska Certified Nurse Midwifery
23 Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act,
24 the Occupational Therapy Practice Act, the Radiation Control Act,
25 the Residential Lead-Based Paint Professions Certification Act, the
26 Uniform Controlled Substances Act, the Uniform Licensing Law, the
27 Wholesale Drug Distributor Licensing Act, or sections 71-102,
28 71-3702 to 71-3715, 71-4701 to 71-4719, and 71-6053 to 71-6068;

1 (2) Serve in an advisory capacity for other rules and
2 regulations adopted and promulgated by the department, including
3 those for health care facilities and environmental health services;

4 (3) Carry out its powers and duties under the Nebraska
5 Regulation of Health Professions Act;

6 (4) Appoint and remove for cause members of
7 health-related professional boards as provided in sections 71-111,
8 71-112, and 71-118;

9 (5) At the discretion of the board, help mediate issues
10 related to the regulation of health care professions except issues
11 related to the discipline of health care professionals; and

12 (6) Have the authority to participate in the periodic
13 review of the regulation of health care professions. and

14 ~~(b) Determine the policies of the department concerning~~
15 ~~the professions and occupations listed in this section.~~

16 ~~(2) All funds rendered available by law may be used by~~
17 ~~the board in administering and effecting such purposes.~~

18 Sec. 8. No member of the State Board of Health shall be
19 liable in damages to any person for slander, libel, defamation of
20 character, breach of any privileged communication, or otherwise for
21 any action taken or recommendation made within the scope of the
22 functions of such board while acting as an agent of the state if
23 such board member acts without malice and in the reasonable belief
24 that such action or recommendation is warranted by the facts known
25 to him or her after a reasonable effort is made to obtain the facts
26 on which such action is taken or recommendation is made.

27 Sec. 9. This act becomes operative on October 1, 2003.

28 Sec. 10. Original sections 71-2602, 71-2603, 71-2606,

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1 71-2607, and 71-2610, Reissue Revised Statutes of Nebraska, and
2 sections 71-2601 and 71-2610.01, Revised Statutes Supplement, 2002,
3 are repealed.